Dato' Idris bin Jusoh v Dato' Seri Tuan Guru Hj Abdul Hadi bin Awang & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO T–02–94 OF 2004
HASHIM YUSOFF, TENGKU BAHARUDIN SHAH JJCA AND LOW HOP BING J
2 MARCH 2004

Civil Procedure — Injunction — Interim injunction — Application — Publication of defamatory words — Words were untrue — No likelihood of succeeding at defence — Whether interim injunction should be granted

The appellant applied for interim injunction against the respondents to prevent the respondents from repeating, publishing or distributing words alleged to be defamatory of the appellant. The respondents had averred through the affidavit of the first respondent, denying having uttered the words published and stated that the first respondent would rely on the defence of justification and fair comment during the trial. The learned trial judge allowed the interim injunction during the *ex parte* application, but disallowed it during the *inter parte* hearing. The appellant appealed.

Held, allowing the appeal:

The facts showed that the words referred to were obviously untrue and therefore the intended defence of justification was not likely to succeed at the trial (see para 6). The High Court judge had erred in refusing to grant the interim injunction (see para 8).

[**Bahasa Malaysia summary**

Perayu telah memohon injunksi sementara terhadap responden-responden untuk menghalang responden-responden daripada mengulangi, menerbitkan atau mengedar perkataan-perkataan yang dikatakan berunsur fitnah tentang perayu. Responden-responden telah menegaskan melalui afidavit responden pertama, dengan menafikan telah melafazkan perkataan-perkataan yang telah diterbitkan dan menyatakan bahawa responden pertama akan bergantung kepada pembelaan justifikasi dan komen berpatutan semasa perbicaraan. Hakim yang bijaksana telah membenarkan injunksi sementara semasa permohonan *ex parte*, tetapi tidak membenarkannya semasa perbicaraan *inter parte*. Perayu membuat rayuan.

Diputuskan, membenarkan rayuan tersebut:

Fakta menunjukkan bahawa perkataan-perkataan yang dirujuk adalah jelas tidak benar dan oleh itu pembelaan yang dimaksudkan untuk justifikasi kemungkinan besar tidak akan berjaya dalam perbicaraan (lihat perenggan 6).

A Hakim Mahkamah Tinggi terkhilaf kerana enggan membenarkan injunksi sementara (lihat perenggan 8).]

Notes

B For cases on interim injunction see, 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 2628–2670.

Appeal from: Suit No 22–03 of 2004 (Hight Court, Terengganu)

C *Alvin John (Ahmad Redza and KC Lu) (Shahrizat Rashid & Lee) for the appellant.*
Hj Sulaiman bin Abdullah (Mohd Lufti Awang and Khaled bin Abd Jalil with him) (Fariz Halim & Co) for the respondents.

Hashim Yusoff JCA (delivering judgment of the court):

D **[1]** This is the judgment of the court.

[2] This is an application for interim injunction taken out by the appellant against the respondents to prevent the respondents from repeating, publishing or distributing words alleged to be defamatory of the appellant/plaintiff.

E **[3]** The defendants averred through the affidavit of the first respondent, denying having uttered the words published and in the same breadth the first respondent said he will rely on the defence of justification and fair comment during the trial.

[4] The learned trial judge had allowed the interim injunction during the F *ex parte* application, but disallowed it during the *inter parte* hearing.

[5] We have carefully considered the grounds of judgment of the learned judge, the argument fully canvassed by learned counsel for both sides and also the materials before us and have found that:

G (1) the sting of the words used by the respondents are to the effect that the appellant had enriched himself by acquiring Government contracts allegedly funded by 'Wang Ehsan' and that he is a dishonest and corruptible person.

(2) However there is no material put forward before this court to show that the projects awarded to Jusoh Enterprise SB of which appellant is a minor H shareholder, were funded by 'Wang Ehsan'.

Moreover, these contracts were awarded by the Federal Government. As such, there is no nexus between these contracts and the Wang Ehsan. In fact, one of the contracts was awarded on 17 July 1999 (refer p 135 AR) ie even before the issue of 'Wang Ehsan' could have arisen.

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[6] Therefore the words referred to are obviously untrue and therefore the intended defence of justification is not likely to succeed at the trial.

[7] In the light of this finding, we feel it unnecessary to dwell upon the issue of conspiracy to injure the appellant.

[8] That being so, we find that the learned High Court judge had erred in refusing to grant the interim injunction.

[9] We therefore allow this appeal with costs here and below and set aside the order of refusal of the learned High Court judge and hereby grant the interim injunction prayed for.

[10] Deposit refunded to the appellant.

[11] Our thanks to both counsel for their diligence and forceful arguments.

Appeal allowed.

Reported by Loo Lai Mee

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